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Empowerment through Law: Tracing India's Journey and the Evolution of Judicial Thought

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ABSTRACT

This article explores the progress of gender equality in India and how the judicial system has played a role in empowering women through laws. It begins by acknowledging the tendency to marginalise women in socio-legal matters and then highlights the rise of feminism as a movement advocating for social, economic and political gender parity. During the independence era, feminism emerged in India with initiatives aimed at abolishing harmful practices like sati and promoting widow remarriage. The article delves into actions taken during this time such as the Bengal Sati Regulation Act and the Hindu Widow Remarriage Act.

After gaining independence, India's constitution laid a foundation for gender equality through Articles 14, 15 and 16. These articles promote non-discrimination and have special provisions for the betterment of women in society. The article also spotlights landmark court cases that challenged gender disparities, including Mohd. Ahmed Khan v Shah Bano Begum, Vishaka v. State of Rajasthan and Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty. The article further discusses the development of abortion laws in India influenced by precedents like the Roe v. Wade case, which emphasized women's right to reproductive autonomy.

Lastly, the article sheds light on efforts done by Indian judiciary to address gender stereotypes present in legal terminology and decision-making processes. A guidebook presented by the Chief Justice of India promotes the dispensation of justice and the removal of indecent legal language. To sum up, this article highlights the role played by the judiciary in shaping societal norms and values, fostering inclusiveness, fairness and a compassionate community. Further, it shed light to how these endeavors impact constitutionalism and contribute to advancing gender equality.

Keywords: *feminism, judicial empowerment, gender disparities, Supreme court, Handbook.*

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I. INTRODUCTION

There was a prevailing practice that when social, legal, political and other relevant things are being discussed, it begins with men and always ends up without even render a chance to intervene the women in the society, as they are now placed as equal counter parts of the society. Its decades old unwritten practice which termed to be a law in the eyes of a common man, that only men are being discussed or issues are addressed only at par with gender. Now let's have a look at what is feminism? Feminism, the belief in social, economic, and political equality of the sexes. Although largely originating in the West, feminism manifested worldwide and is represented by various institutions committed to activity on behalf of women's rights and interests.¹

Unlike other countries Indian context of emergence of feminism is an initiative from men. Which can be counted from the pre independence era to the post-independence era. In pre independence era that is when India under the colonial rule, from men the first ignition of wave of feminism began. To protest and eradicate sati which was a social evil which mandates the widow to sacrifice her life in to the pyre of her husband. This immolation of Hindu women in to her husband's funeral pyre does not have clear Vedic sanction and practiced as a custom. Lord William Bentick as the Governor General of India, passed The Bengal Sati Regulation Act². This was done as a strict thrive into the deep-rooted spiritual believes are baseless without any conscience. Along the same time, he helped Rajaram Mohan Roy to suppress other social evils like female infanticide, child marriage and polygamy. Later the act was made punishable and illegal by the courts.

Even though the attempt from the side of Britishers were to demolish the deep-rooted trust and believes which they thought to affect the unity of our country. They tried to pave the path of success through these efforts in society in a versatile country like India. Hindu Widow Remarriage Act³ was passed after the tireless efforts from Bengali icon, Ishwar Chandra Vidyasagar a Bengali Sanskrit pundit, social reformer, writer, philanthropist and educator. The Act was passed by Lord Canning (Drafted by Lord Dalhousie).

The neutrality concept was not even come to the lime light after the emergence of the Constitution of India, which has laid down a grunt norm in which all the people are treated equally and they are not discriminated. Article 14 of the constitution envisages that, "The State shall not deny to any person equality before the law or the equal protection of the laws within

² Sati Regulation XVII, A.D. 1829 of the Bengal Code, (December 5, 1829).

³ Hindu Widow Remarriage Act, 1856, (July 16, 1856).

the territory of India.”⁴

Article 15 states that “The State shall not discriminate against any citizen on grounds only of religion, race, sex, place of birth or any of them.” Article 15(3) states that “Nothing in this article shall prevent the State from making any special provision for women and children.”⁵ The core idea of incorporating this Article is to eradicate the socio-legal issues which made to stand the women on backward footing in case of equality. Women were considered as economically, socially and politically handicapped and this made the makers of our constitution to land on a clear footing that made a way forward to uplift weaker and make them equipped with others.

Article 16 states that “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”⁶ The constitution with its tremendous efforts to incorporate all the concepts after studying almost all the constitutions around the globe and hence turned out to be lengthiest written constitution in the world so far. But this much efforts were not in vain to resolve the issue of equality questions in a culturally vast and diverse nation. Each practice which results in inequality were seem to be tied up with cultures and practices.

Inspite all the efforts and cleared all the legal constraints to vanish the dilemma of women in a patriarchal based society, the eyes of evil continued. Let’s analyse some cases in which women who stood up and fought for their rights, it made a difference in the entire outlook and approach to them and finally they won their battle for rights. Some of them successfully lead to drafting of enactments of welfare legislations. There is a legal maxim “*Vigilantibus non dormientibus jura subveniunt*” literally means that “the law aids the vigilant, not those who sleep over their rights”. Those who fought for the rights paved the path and shed light for the rest. In *Mohd. Ahmed Khan v Shah Bano Begum*⁷, the landmark judgement laid the ground for thousands of women to make legitimate claims which were denied to them earlier. The practice of talaq-e-bidat and talaq-e-mughallazha was held unconstitutional. This made a chance to raise questions on equality and gender rights. The drift in personal laws done by Indian judiciary through the well-deserved judicial intervention trumpeted the law of equality among application of personal laws and this were much welcomed by women of all religions.

In the case of *Vishaka v. State of Rajasthan*⁸, which is another mildstone judicial pronouncement from the Honorable Supreme Court of India, which lead to the formulation of

⁴INDIA CONST. art. 21.

⁵ INDIA CONST. art. 15. Cl (3).

⁶ INDIA CONST. art. 16.

⁷ *Mohd. Ahmed Khan v. Shah Bano Begum & Ors*, A.I.R 1985 S.C 945(India).

⁸ *Vishaka v. State of Rajasthan*, A.I.R. 1997 S.C 3011 (India).

guidelines regarding harassment of women at workplace and made it compulsory to both public and private sector. This enforced the fundamental rights of working women. Seventeen years after the judicial pronouncement, parliament in 2013 passed Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act.⁹ In *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*¹⁰ the court held that rape as a violation of fundamental right and stated that under Article 32 court is empowered to grant compensation which includes interim relief. Court hence noted the practical impediments like social barriers faced by Indian women along with psychological and social consequences of rape victims. This leads to the creation of a Criminal Injuries Compensation Board to cover losses experienced by victims of sexual assault.

II. REPRODUCTIVE AUTONOMY: ABORTION LAWS IN INDIA AND ABROAD

In India before 1971 abortion was illegal. The land mark judgement in *Roe v. Wade*¹¹ related to women's right to abortion made global impacts and which made larger notion across the globe. The U S Supreme Court opined that this judgement made women to take independent decision and hence they are entitled to the individual right of bodily autonomy and this decision needs a highest level of constitutional protection. While considering the legality of abortion in Indian context, our legislature has enacted the Medical Termination of Pregnancy (MTP) Act in 1971.¹² After the enactment, abortion made legal but it is only in respect to the prescribed conditions in the MTP Act. Parliament amended the MTP Act in 2003¹³. Separate state wise norms and committees were formed to deal with the matter under consideration and prescribes punishment. Recent suggestions regarding the time limit of abortion from 20 weeks to 24 weeks. In *Suchita Srivastava v. Chandigarh Administration*¹⁴ court held that women have her own right to make reproductive choices and it comes under the ambit of Article 21 Indian Constitution.¹⁵

III. RESHAPING LEGAL LANGUAGE IN INDIA

Supreme court of India recently took an effort to look in to the terms which creates pre-determined stereo types in judicial decision making and which may influence the mind of a judicial officer to create a prejudice on a particular category on harmful ways. The honorable CJI of India makes his stand clear by saying through the handbook that, judges are duty bound to decide the case at hand by applying his mind without any harmful pre-determined notion to

⁹ Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (India).

¹⁰ *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*, A.I.R 1996 S.C 922 (India).

¹¹ *Roe v. Wade*, 314 F. Supp. 1217 (D.C. 1970) (US).

¹² Medical Termination of Pregnancy (MTP) Act, 1971 (India).

¹³ Medical Termination of (Amendment) Act, 2002 (India).

¹⁴ *Suchita Srivastava & Anr v. Chandigarh Administration*, (2009) 9 S.C.C 1 (India).

¹⁵ INDIA CONSTI. Art. 21.

the parties. The oath of a judge mandates him to approach the case with a clean hand and of impartiality. The reliance on these particular stereotypes about women is liable to distort the laws application in harmful ways. If the stereotypes may not affect the case directly but it may create an adverse effect on our constitutional ethos. As an example, the book says the term used 'pauper' and preferred to use it as 'indigent person'. The dare needs of illuminating these stereotypes which in the opinion of CJI helps for inclusiveness, equality and compassionate society. The book makes a real effort to identify the terms which used before and tried to replace the same with better alternatives.

Our Hon'ble Chief Justice of India had taken a very appreciable effort to make the constitutional morality at par with society morals. Changes may happen require to the changes of society. Courts are considered to be the guardians of constitution, hence the terminologies used by the judiciary has to be good and does not create any bad impression over prevailing individual rights. The relevance of the hand book on combating gender stereotypes creates an awareness and to eradicate the unworthy or unwittingly employed terms in the past by various courts can be avoided. CJI points out through the book that it will create an impartial justice delivery system to individuals of all genders.

Media unnecessarily create an impression that women are specially treated and others are not. The impression that creates an undue advantage over society. Rather than being over exhausted about all these considerations on the other hand law has to be based on equality. The handbook discussion starts with the word 'adulteress' which is recommended to be altered with 'women who has engaged in sexual relation outside of marriage' and the word 'affair' is preferred to be replaced with 'relationship outside of marriage'. The words are likely to be cause an adverse inference over the person, this can be avoided by using the preferred alternative terms. In judicial pronouncements usage of these stereotypical terms leads to an inequality and it causes an un ethical way to convey a person's image to the entire society. This by the way adversely affect our constitutional morality.

How can be child who born out of wed lock be characterized as bastard...? it's a hard and unethical way which damage the child's fundamental rights. The social stigma that the child undergoes and the humiliation, made others feel that he is inferior to others. As the same way it demolishes the Article 21 of the constitutional protection which provides the person right to live with dignity. It may not be a mere animal existence, The Honorable Supreme Court held that right to life includes life with human dignity and not just a physical existence or mere

animal existence¹⁶.

Right to life is a minimal right every human can claim. The term 'bastard' has been preferred to be used as 'Non marital child or a child whose parents were not married'. As the guardian of constitution our judiciary has a responsibility to safe guard the norms and its values. So, our judiciary cannot use these prejudiced terms which will create an adverse influence in the society morals and as the same time creates an image that the terms was right. People are bound to follow and respects the judicial pronouncements. The court's action by challenging and dispelling stereotypes has upheld the principles of our constitutionalism with pride.

This may seem to be a minor effort in terms of other welfare legislative enactments or landmark judgements which has taken the lead for revolutionary changes across the country. But a term which creates a bad impression from the beginning can be removed and hence this lead to shed lights for upcoming judgements and terminologies used by judiciary. The changes have to be begun from root not from the top, while considering this handbook we can say that the transformation has begun on the correct time. India has undergone a profound transformation and emerging as a nation which has been monitored and assessed globally. Our global stake on all matters especially on judicial interventions are counting by other nations.

The terms which are identified as incorrect has been replaced with an alternative word this effort makes the path smoother to remove the dirt and debris from our verdicts. Change of using the term biological sex or biological male or female to 'sex assigned' is a drift to new changes and a liberal view of the entire judiciary. The term 'child prostitute' itself seems odd because the term child denotes the incapability of being stick on to a decision of his or her own choice. Then how can be a child to be portrayed as a 'child prostitute' it is preferred to be denoted as child who has been trafficked. It can be reread with the spirit of the judiciary to rectify and shape the future. Similarly, the terms used for describing a woman like 'Dutiful wife / Faithful wife / Good wife / Obedient wife' this clearly indicated the stereotypical attitude of the male society to corner a woman in to such bottle necked world of society. They never wanted to portrait the remarks as wife. The efforts to vanish this prejudicial approach which might limit a particular category and the effort from the part of judiciary is an eye opener to the categories of people who are narrow minded. Similarly, use of term 'unwed mother' to mother also denotes the respect of motherhood and it allows that person to live with dignity.

The book ends with showing light towards the corrected path and prescribes the judicial officers to avoid the bias in any kind while making judgements. This action will be beneficial to the

¹⁶ Francis Coralie Mullin v The Administrator, Union Territory of Delhi & Ors A.I.R 1981 S.C 746 (India).

judiciary to deliver justice impartially and treat each and every one as equal as our constitutional mandate. This effort has definitely uplifted the veracity of the Indian judicial system globally and always major revolutions starts from single or little efforts. A country like India which has very diverse culture travels through the path of equality by avoiding prejudicial or stereotypical approach may mark in future by the golden words.

“I measure the progress of a community with the degree of progress women have achieved”

- Dr. Bhimrao Ramji Ambedkar
